IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3115 of 2006
With
CIVIL APPLICATION No. 10018 of 2006
In
FIRST APPEAL No. 3115 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DAVID M. ANIL & 2 - Appellant(s)
Versus
DINESH R. AGRAWAL & 4 - Defendant(s)

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Appearance :
MR MB GANDHI for Appellant(s) : 1 - 3.MR CHINMAY M GANDHI for Appellant(s) : 1 - 3.
None for Defendant(s) : 1 - 5.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 30/08/2006

ORAL JUDGMENT

1.By way of this appeal, the appellants herein – original plaintiffs have challenged the legality

and validity of the order passed by the learned Presiding Officer, Fast Track Court No.11, Vadodara, dated 15th April, 2006 passed below Exh.10 in Regular Civil Suit No.19 of 2005 in dismissing the suit under Order 7 Rule 11 of the C.P.C. The plaintiffs filed Regular Civil Suit No. 19 of 2005 before the District Court, Vadodara, for a declaration that until the fresh election is held by their members and the election are held of all the trusts under the administration and management of the Methodist Church in India, the trust and/or all the administrators of the defendant trust have no jurisdiction and/or authority to manage the affairs of all the Churchs. A further declaration is also sought for a direction directing the defendant Nos.2 and 3 to appoint the new trustees by completing the election process and to be elected by the voters as per the register maintained and that till then the defendants, their agents and servants may not incur expenditure more than Rs.500/- without the prior permission of the Charity Commissioner. There are other reliefs also

sought touching the administration and management of the trust. In the said suit, the defendants appeared and filed written statement, however, simultaneously, original defendant No.5 also submitted an application under Order 7 Rule 11 of C.P.C. to dismiss the said suit as considering Section 80 of the Bombay Public Trust Act (hereinafter referred to as “the Act”), the suit itself is not maintainable and that even if the suit is maintainable, no permission is granted by the Charity Commissioner to file a suit as required under Section 50 of the Act. The learned trial Court allowed the application below Exh.10 and dismissed the suit by impugned order by holding that the suit is barred under Section 80 of the Act and even otherwise, the suit is required to be dismissed considering the provisions of Sections 50 and 51 of the Act. Being aggrieved and dissatisfied with the order passed by the learned trial Court passed below application Exh.10 in dismissing the said suit under Order 7 Rule 11 of the C.P.C., the appellants herein – original plaintiffs have

preferred the present appeal.

2.Shri Chinmay Gandhi, learned advocate appearing on behalf of the appellants herein – original plaintiffs, has submitted that some of the disputes and the reliefs sought in the suit do not fall within the ambit of Section 50 of the Act. He has further submitted that in fact, the plaintiffs had already submitted an application before the Charity Commissioner for necessary permission as required under Section 50 of the Act but, the Charity Commissioner has not decided the said application and therefore, the plaintiffs were required to file Special Civil Application being Special Civil Application No.12603 of 2006 before this Court for an appropriate direction directing the Charity Commissioner to decide their application and this Court has directed the Charity Commissioner to take an appropriate decision on the said application as early as possible. He has also further submitted that so far as the reliefs sought in the suit is concerned, they are with regard to the election of

the trust and the same do not fall within the scope and ambit of Section 50 of the Act and therefore, the learned trial Court has erred in dismissing the suit, considering the provisions of Sections 50, 51 and 80 of the Act.

3.I have gone through the impugned order passed by the learned trial Court. The appellants were directed to produce the copy of the plaint and on going through the same, it is crystal clear that the dispute is with regard to election of the trust and the voters list and touching the administration and management of the trust. Apart from the fact that whether such dispute is fall within Section 50 of the Act or not, the Section 80 of the Act is very much clear. The Section 80 of the Act reads as under :-

> ***"S.80. :- Bar of jurisdiction :***
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> *Save as expressly provided in this Act, no Civil Court shall have jurisdiction to decide or deal with any question which is by or under this Act to be decided or dealt with by any officer or authority*

under this Act, or in respect of which the decision or order of such officer or authority has been made final and conclusive."

4.It cannot be disputed that the dispute with regard to administration and management of the trust and even election of the managing committee of the trust and the voters list and the dispute, which is raised in the aforesaid Regular Civil Suit and the reliefs sought are required to be considered by the Officer and/or authority under the Bombay Public Trust Act. In that view of the matter, Section 80 of the Act would come into play and therefore, the Civil Court shall not have any jurisdiction to decide or deal with any question, which is by or under the Act to be decided or dealt with by any Officer or authority under the Act or in respect of which the decision or order of such Officer or authority has been made final and conclusive. In that view of the matter and barred of jurisdiction, the learned trial Court is justified in dismissing

the said suit by considering Section 80 of the Act. So far as invocation of Sections 50 and 51 of the Act is concerned, it is not in dispute that the very appellants have approached the Charity Commissioner for granting the permission to file the suit and the said application is pending and has not been decided till date, meaning thereby, there is no permission granted by the Charity Commissioner. Before the Charity Commissioner granted the permission, the suit came to be filed. Under the circumstances, on this ground also, considering Section 50 of the Act, the suit is rightly dismissed. On both the grounds i.e. under Section 80 as well as Section 50 also the suit is rightly dismissed by the learned trial Court. Under the circumstances, the present appeal is required to be dismissed and is accordingly dismissed. However, there shall be no order as to costs.

5. In view of the dismissal of the main appeal, no orders in the Civil Application.

[M.R.SHAH, J.]

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